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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,019	07/15/2003	Christopher T. Dohl	33979	8613

23589 7590 12/09/2004

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/620,019

Applicant(s)

DOHL ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

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In claim 15: Line 2, the word "oodium" is misspelled.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 20-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Namdari.

Namdari discloses a high protein dough mix for a leavened bakery product. The dough comprises 10-80% of a protein containing material selected from the group consisting of soy products, gluten, milk products, whey products, egg products and nut and up to 50% flour. The protein containing material may include 1-40% soy products, 1-40% wheat gluten, 1-20% milk product, 1-20% whey products, 0-50% egg products, 1-30% nuts and mixtures thereof. The whey product includes sodium casseinate. Up to 8% of a leavening agent is also used; typically, baking soda, baking powder or yeast may be utilized. ( see col. 1 lines 35-60, col. 2 and the examples)

The reference discloses all the limitations in the above cited claims. Since the same proteins such as whey protein, egg, and sodium casseinate are used, it is inherent the percent protein is the same as claimed in claims 1 and 20. The amount of protein falls within the range claimed. Since the amount of protein fall within the ranges claimed, it is inherent the total protein of the product is the same as claimed. Wheat gluten is a wheat protein concentrate product.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 5, 9-19, 24, 26-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Namdari in view of Haralampu et al.

Namdari does not disclose the leavening agent as claimed and the inclusion resistant starch in the dough and baked product.

Haralampu et al disclose a granular resistant starch; the starch is chemically modified. The resistant starch is used in a variety of food such as cookies, breads, brownies, snacks etc.. The resistant starch is characterized by a total fiber content in the range of from about 20-50% by weight. The starch is used in amounts ranging from about 1-15%. The starch is used in place of sugar, flour, and/or fat to lower calorie and fat content and the starch is used to increase fiber content ( see col. 2 lines 53-64, col. 4, col. 6 lines 29-57).

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It would have been obvious to one skilled in the art to add resistant starch as taught by Haralampu et al to the Namdari dough when desiring to lower the amount of flour, fat and sugar used to make product lower in calorie, fat and higher in fiber content. While Haralampu et al disclose the amount used is generally in the range of 1-15%, it would have been obvious to increase the amount depending on the properties wanted. For example, it would have been obvious to use more when wanting more fiber, or to decrease carbohydrate content by replacing more of the sugar and flour with the starch. It would have been obvious to use any known leavening agents; all the agents claimed are notoriously well known in the art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gilbertson et al disclose food ingredient containing wheat gluten, soy grits and soy flour.

References WO00/195731, WO 00/195730 and W)00/193686 on the IDS filed in Nov. 3, 2003 are not considered because copies of the references were not provided.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 8, 2004

  
LIEN TRAN  
PRIMARY EXAMINER

*Group 1702*